972

# SUPREME COURT OF THE UNITED STATES.

## No. 100.

LESSEE OF JOHN POLLARD & AL., PLAINTIFF IN ERROR,

vs.

JOHN HAGAN & AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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J. & G. S. Gideon, Printers.

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the Supreme Court of the State of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, being the highest court of law and equity in said State in which a decision could be had, in a suit, between John Kemp, on the demise of the heirs of Pollard, and James Thorp, casual ejector; John Hagan and Philip McLosky, tenants in possession; wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States; and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said heirs of William Pollard, deceased, as by their complaint appears. We being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this 30th day of November, in the year of our Lord one thousand eight hundred and forty-two.

*Clerk of the Sup. Court of the U. S.*

Allowed by HENRY W. COLLIER,
*Chief Justice of the Sup. Court of Alabama.*

THE UNITED STATES OF AMERICA:

To James Thorp, John Hagan, and Philip McLosky, tenants in possession, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Alabama, wherein John Pollard, William Pollard, John Fowler and Harriet his wife, late Harriet Pollard, Henry P. Ensign and Phebe his wife, late Phebe Pollard, George Huggins and Louisa his wife, late Louisa Pollard, and Joseph Case and Eliza his wife, late Eliza Pollard, heirs at law of William Pollard, deceased, were plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 30th day of November, in the year of our Lord one thousand eight hundred and forty-two.

HENRY W. COLLIER,
*Chief Justice of the Supreme Court of Alabama.*

Service acknowledged.

CAMPBELL & CHANDLER, *for defendants.*

*December* 1, 1842.

JOHN KEMP, ex dem. the heirs of William Pollard,
vs.
HAGAN, McLOSKEY et al.

Error from the supreme court of the State of Alabama to the Supreme Court of the United States:

Know all men by these presents, that we, John Pollard, and George Huggins, and William Stanton, are held and firmly bound unto John Hagan and Philip McLoskey in the sum of two hundred dollars, to be paid to the said John Hagan and Philip McLoskey, their executors and administrators; to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, &c., firmly by these presents. Sealed with our seals, and dated this 29th December, 1842.

Whereas the above mentioned heirs of William Pollard have prosecuted a writ of error to the Supreme Court of the United States, to recover the judgment rendered in the above entitled case by the supreme court of the State of Alabama: now, therefore, the condition of the above obligation is such, that if the above mentioned heirs of William Pollard shall prosecute their said writ of error to effect, and answer all damages and costs if they shall make good

their plea, then this obligation to be null and void, otherwise to remain in full force and virtue.

Witness our hands and seals the day and year above written.

GEO. HUGGINS,
JNO. POLLARD,
WILLIAM STANTON.

Security approved and good.

DAVID FILES,
*C. C. C. S. D. Ala.*

I, David Files, clerk of the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, do hereby certify that the above and foregoing *one* page contains a true and perfect copy of the original bond filed in the case of John Kemp, ex dem. heirs of Pollard vs. Hagan, McLoskey et al.

In testimony whereof, at office in the city of Mobile, I have
[L. S.] hereunto set my hand and affixed the seal of the said circuit court this 30th day of December, A. D. 1842.

DAVID FILES,
*C. C. C. S. D. Ala.*

Bond filed in office December 30th, 1842.

DAVID FILES, *Clerk.*

UNITED STATES OF AMERICA:

The President of the United States of America, to the honorable judges of the supreme court of the State of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had, in the said suit between John Kemp, on the demise of the heirs of William Pollard vs. James Thorp, casual ejector, John Hagan and Philip McLoskey, tenants in possession, holding under, &c., who were admitted defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said heirs of William Pollard, to wit, John Pollard, William Pollard, John Fowler and Harriet his wife, late Harriet Pollard, Henry P. Ensign and Phebe his wife, late Phebe Pollard,

George Huggins and Louisa his wife, late Louisa Pollard, and Joseph Case and Eliza his wife, late Eliza Pollard, as by their complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have them at Washington on the first Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this 30th day of November, in the year of our Lord 1842.

_____,
*Clerk of the Supreme Court of the U. S.*

Allowed by HENRY W. COLLIER,
*Chief Justice of the Supreme Court of Alabama.*

THE STATE OF ALABAMA:

In the Supreme Court.

Be it remembered that, on the 12th day of January, 1842, there was filed in the office of the clerk of said court a writ of error, in the words and figures following:

THE STATE OF ALABAMA:

To the clerk of the circuit court of Mobile county, greeting:

*Writ of error.*

Whereas it is represented that, in the record and procedings of a cause tried and determined at a circuit court, begun and held for the county of Mobile, on the first Monday after the fourth Monday of October, in the year of our Lord one thousand eight hundred and forty-one, wherein John Kemp, *ex demise* of heirs of William Pollard, is plaintiff, and James Thorp and John Hagan and Philip McLoskey, tenants in possession, are defendants, manifest error hath intervened to the damage of the said John Kemp, *ex dem.* heirs of William Pollard. Therefore, we command you to send certified, under your hand and official seal, a transcript of the record in said cause to the judges of our Supreme Court, at a term thereof to be holden on the first Monday of January next, that, if error there be, the same may be corrected.

Witness Augustus Brooks, clerk of our said circuit court at office, this thirty-first day of December, in the year of our Lord one thousand eight hundred and forty-one, and of American independence the sixty-sixth year. Issued 31st day of December, 1841.

Attest: A. BROOKS, *Clerk.*

To which the following transcript of record was returned:

Pleas had before the honorable the circuit court of Mobile county, and State of Alabama, at a term thereof began and held at the court house of said county, in the city of Mobile, on the first Monday after the fourth Monday of October, A. D. 1841. Present, his honor Edward S. Dargan, judge of said court.

*Pleadings.*

Be it remembered that, on the 14th day of August, A. D. 1837, the following writ of ejectment was filed in the office of said circuit court, which is in these words and figures, to wit:

THE STATE OF ALABAMA, *Mobile county, ss:*

Circuit Court, November term, 1837.

James Thorp, late of Mobile county, was attached to answer John Kemp of a plea, wherefore, with force and arms, he entered into a messuage or lot of land, with the appurtenances, situated in the county of Mobile, which John Pollard, William Pollard, John Fowler, and Harriet his wife, late Harriet Pollard, Henry P. Ensign, and Phebe his wife, late Phebe Pollard, George Huggins, and Louisa his wife, late Louisa Pollard, Joseph Case, and Eliza his wife, late Eliza Pollard, demised to the said John Kemp, for a term which is not yet expired, and ejected him from the said farm, and other wrongs to him did, to the great damage of the said John Kemp, and against the peace and dignity of the State of Alabama. And therefore, the said John Kemp, by his attorney, George F. Sallé, complains that, whereas the said John Pollard, William Pollard, John Fowler, and Harriet his wife, Henry P. Ensign, and Phebe his wife, George Huggins, and Louisa his wife, Joseph Case, and Eliza his wife, (which John Pollard, &c., are heirs at law of William Pollard, deceased,) on the fifteenth day of March, one thousand eight hundred and thirty-seven, at the city and county aforesaid, had demised to the said John Kemp the said messuage or lot of land, lying in the city of Mobile, bounded on the north by the south boundary of what was originally designated as John Forbes & Co.'s canal, on the west by a lot now or lately in the occupancy of, or claimed by ——— Ezil, on the east by the channel of the river, on the south by Government street: to have and to hold the said messuage or lot of land, with the appurtenances, of the said John Kemp and his assigns, from the said fifteenth day of March, one thousand eight hundred and thirty-seven, to the end and term of fourteen years from thence next ensuing, to be complete and ended. By virtue of which said demise, the said John Kemp entered into the said messuage or lot of land, and was thereof possessed, and being so possessed thereof, the said James Thorp afterwards, to wit, on the seventeenth day of March, in the year aforesaid, with force and arms, *he* entered into the said messuage or lot

of land, which the lessors demised to the said John Kemp, in form aforesaid, and for the term aforesaid, which is not yet expired, and ejected the said John Kemp out of his farm, and other wrongs to him did, to the great damage of the said John Kemp, and against the peace and dignity of the State of Alabama; whereby the said John Kemp saith that he is injured and endamaged to the value of fifteen hundred dollars. And therefore he brings suit, &c.

Mr. PHILIP MCLOSKY: I am informed that you are in possession of, or claim title to, the premises mentioned in this declaration of ejectment, or to some part thereof, and I being sued in this action as casual ejector, and having no claim or title thereto, do advise you to appear at the next term of the circuit court of Mobile county, to be holden on the second Monday after the fourth Monday of October, 1837, by some attorney of that court, and then and there, by a rule to be made by the same court, to come yourself to be made defendant in my stead, otherwise I shall let judgment go against me by default, and you will be turned out of possession.

Yours, &c. JAMES THORP.

*August* 14, 1837.

It is ordered, by consent of the attorneys for both parties, that Philip McLosky be made defendant in the stead of the now defendant James Thorp, and do forthwith appear, at the suit of the said John Kemp, and receive a declaration in ejectment for the premises in question, and forthwith plead thereunto not guilty, and, upon the trial of the issue, confess lease, entry, and ouster, and insist upon the title only; otherwise, let judgment be entered for the plaintiff against the now defendant Thorp by default. And if, upon the trial of the issue, the said McLosky shall not confess lease, entry, and ouster, the plaintiff shall not be able further to prosecute his writ against the said McLosky; then no costs shall be allowed for not prosecuting the same, but said McLosky shall pay all costs to the plaintiff in that case to be taxed.

And it is further ordered, that if, upon the trial of the said issue, a verdict shall be given for the said McLosky, or it shall happen that the plaintiff shall not further prosecute his said writ for any other cause than for not confessing lease, entry, and ouster, then the lessors of the plaintiff shall pay to the said McLosky costs in that case to be adjudged.

Received and executed the 23d September, 1837, on Philip McLosky.

W. MAGEE,
*Sheriff of Mobile county.*
By M. J. D. BALDWIN,
*Deputy sheriff.*

M. J. D. Baldwin, being duly sworn, deposes and says that he did, on the 23d September, 1837, personally serve Philip McLosky,

the defendant in this suit, who is the person exercising acts of ownership on the premises for which this action is brought, with a true copy of the notice in writing to the said declaration subjoined, and likewise hereto annexed.

Sworn to and subscribed before me, this 27th March, 1838.

CHARLES A. HENRY,
*Justice of the Peace, Mobile county.*

M. D. J. BALDWIN.

THE STATE OF ALABAMA, *Mobile county, ss:*

Circuit Court, Term 1837.

Philip McLoskey, late of Mobile county, was attached to answer John Kemp of a plea, whereof, with force and arms, he entered into a messuage or lot of land, with*in* the appurtenances, situate in the city and county of Mobile, which John Pollard, William Pollard, John Fowler, and Harriet his wife, late Harriet Pollard, Henry P. Ensign, and Phebe his wife, late Phebe Pollard, George Huggins, and Louisa his wife, late Louisa Pollard, Joseph Case, and Eliza his wife, late Eliza Pollard, demised to the said John Kemp, for a term which is not yet expired, and ejected him from the said farm, and other wrongs to him did to the great damage of the said John Kemp, and against the peace and dignity of the State of Alabama; and, thereupon, the said John Kemp, by his attorney, George F. Salle, complains that, whereas the said John Pollard, William Pollard, John Fowler, and Harriet his wife, Henry P. Ensign, and Phebe his wife, George Huggins, and Louisa his wife, Joseph Case, and Eliza his wife, (which said John Pollard, William Pollard, Harriet, Phebe, Louisa, and Eliza, are the heirs at law of William Pollard, deceased,) on the 15th day of March, 1837, at the city and county aforesaid, had demised to the said John Kemp the said messuage or lot of land lying in Mobile, bounded on the north by the south boundary of what was originally designated as John Forbes & Co.'s canal, on the west by a lot now or lately in the occupancy of, or claimed by ——— Ezel, on the east by the channel of the river, and on the south by Government street: to have and to hold the said messuage or lot of land, with the appurtenances, to the said John Kemp and his assigns, from the said 15th March, 1837, to the end and term of fourteen years from thence next ensuing, to be complete and ended. By virtue of which said demise, the said John Kemp entered into the said messuage or lot of land, and was thereof possessed, and being so possessed thereof, the said McLosky afterwards, to wit, on the 17th day of March, in the year aforesaid, with force and arms, entered into the said messuage or lot of land, which the said lessors demised to the said John Kemp in form aforesaid, and for the term aforesaid, which is not yet expired, and ejected the said John Kemp out of his said farm, and other wrongs to him did, to the great

damage of the said John Kemp, and against the peace and dignity of the State of Alabama, whereby the said John Kemp saith that he is injured and damaged to the value of fifteen thousand dollars, and therefore he brings suit, &c.

GEORGE F. SALLE,
*Attorney for plaintiff.*

*Mobile county Circuit Court.*

JOHN KEMP, on the demise of the heirs of Pollard,
*vs.*
JOHN HAGAN.

Circuit Court, Spring term, 1841.

The defendant suggests, before the trial of this cause, that he, and those whose estate he hath for more than three years next before the commencement of this suit, was in the adverse possession of the premises sued for, and that while he was so possessed as aforesaid, &c., and those whose estate he hath, have made valuable and permanent improvements upon the said premises. He prays that the truth of this suggestion be inquired of, and if found to be true, that the assessment allowed by law may be made according to the form of the statute in such cases made and provided.

STEWART & EASTON,
GORDON, CAMPBELL, & CHANDLER,
*For Defendants.*

JOHN KEMP, on the demise,
*vs.*
JOHN HAGAN.

The defendant pleads, in short, by consent, the statutes of limitation.

STEWART & EASTON,
GORDON, CAMPBELL, & CHANDLER,
*For Defendant.*

Baldwin Circuit Court, April term, 1838.

JOHN KEMP, ex dem. Pollard's heirs,
*vs.*
JAMES THORP.

John Hagan, by his attorney, comes and defends the wrong and injury, when, &c., and prays to be made defendant in this cause, in lieu of the casual ejector, confesses lease, entry and ouster, insists on the title only, and for plea says he is not guilty in manner and form as the plaintiff against him hath alleged; and of this he puts himself on the country.

GORDON, CAMPBELL & CHANDLER,
STEWART, THORNTON & EASTON,
*Attorneys for Defendant.*

Circuit Court, Fall Term, 1840.

JOHN KEMP, ex dem. heirs of WM. POLLARD,
vs.
JAMES THORP.

Presiding judge having been [present,] cause continued.

Circuit, Spring Term, 1841.

JOHN KEMP, ex demise of the heirs of WM. POLLARD,
vs.
JAMES THORP—JOHN HAGAN in possession.

This case being under deliberation and not disposed of, continued until Saturday morning at 9 o'clock.

JOHN KEMP, ex dem. the heirs of WM. POLLARD,
vs.
JAMES THORP.

Circuit Court, Fall Term, 1841.

This day came the parties by their attorneys, and also came a jury, to wit: C. W. Dorrance, and eleven others, good and lawful men, who, being elected, tried, and sworn, well and truly to try the issue joined between the parties, on their oaths do say: "We, the jury, find the defendant not guilty." It is therefore considered by the court, that the defendant go hence and recover against the lessors of the plaintiff his costs about his suit in this behalf expended.

Ex dem. the heirs of POLLARD,
vs.
PHILIP MCLOSKY. } Ejectment.

Be it remembered, that on the trial of this , the plaintiffs gave in evidence, in support of the title, a patent from the United States for the premises in question; an act of Congress, passed the day of July, 1836, confirming to them the premises in the said patent mentioned, together with an act of Congress, passed the 20th may, 1824. The premises in question were admitted by the defendants to be covered by and comprehended within the patent, and there was likewise an admission by both parties, that the land lay between Church street and North Boundary street, in the city of Mobile, and there the plaintiffs rested their case.

The defendants, in support of their title to said premises, offered in evidence a paper writing, purporting to be a translation of a Spanish grant to Panton, Leslie & Co., which paper writing is in the words and figures following, (here let it be inserted verbatim,) to the introduction of which, as evidence, the plaintiffs by their counsel objected; but the court overruled the objection, and admitted the same in evidence to the jury. The defendant, further

to maintain the issue on his part, offered in evidence another paper writing, purporting to be a certificate from the register and receiver of the district in which the premises in question are situated, in the words and figures following, (here let it be inserted,) professing to be a certificate of the confirmation of the supposed grant above set forth. It was proved, that the premises in question lay east of the lot mentioned in the said supposed grant and certificate; to the competency and relevancy of the last mentioned evidence in this case, the plaintiffs, by their counsel, objected; but the court overruled the objection, and permitted the evidence to go to the jury.

The defendant, further to maintain the issue on his part, introduced a witness to prove that the premises in question, between the years 1819 and 1823, were covered by the water of Mobile river at common high tide in the said river, and which evidence went to bring the premises within the decision of the supreme court of this State, in which they have decided, that all the lands on the borders of the rivers which ebb and which are overflowed by the waters of said rivers at high tides, could not be granted by the General Government; to which evidence the plaintiffs, by their counsel, excepted, alleging that, as the defendant had relied on his title as derived from the United States, he ought not to be permitted to shift his ground or to discharge the title of the United States, and set up an outstanding title in the State of Alabama, or any one else; but the court overruled the objection, and admitted the evidence to go to the jury.

The defendant, further to maintain the issue on his part, offered one James Inerarity, who stated that he was one of the late firm of John Forbes & Co., to prove that the conditions in the supposed grant above set forth had been complied with according to its terms; to which the plaintiffs, by their counsel, objected, alleging that it was giving parol evidence to support and aid what the defendant set up as a complete Spanish grant or patent; but the court overruled the objection, and permitted the testimony to go to the jury.

The patent of the plaintiff, issued in pursuance of the act of Congress, 1836, entitled an act for the relief of William Pollard's heirs, together with the act itself, and the act of Congress of 1824, conveying certain lots to the corporation of Mobile, and the persons therein named, are part and parcel of this bill of exception, as well as the Spanish grant to Panton, Leslie & Co., for the land immediately west of the premises sued for, and are divided only by Water street; copies of all which are hereto attached.

It was also in proof, on the part of the defendant, that at the date of the Spanish grant to Panton, Leslie & Co., *that* the waters of Mobile bay, at high tide, flowed over what is now Water street, and over about one-third of the lot now west of Water street, conveyed by the Spanish grant to Panton, Leslie & Co.

It was also in proof, on the part of the defendant, that the waters continued to overflow Water street and the premises sued for, dur-

ing all the time up to 1822 or 1823; to all which admissions of testimony on the part of defendant, plaintiff excepted.

The court charged the jury, that if they believed that the premises sued for were below usual high water mark, at the time the State of Alabama was admitted into the Union, then the act of Congress, and the patent in pursuance thereof, could give the plaintiff no title, whether the waters had receded by the labor of man only, or by alluvion; to which plantiff excepted, and the court signs and seals this bill of exceptions.

E. S. DARGAN, *Judge.* [SEAL.]

*Patent.*

The United States of America, to all to whom these presents shall come, greeting:

Know ye, that there has been deposited in the General Land Office, a certificate of the register and receiver of the land office at St. Stephen's, Alabama, whereby it appears that under the provisions of the act of Congress, approved on the second day of July, one thousand eight hundred and thirty-six, entitled "An act for the relief of William Pollard's heirs," there has been surveyed, as being confirmed to them by the said act, a tract of land within the city of Mobile and State of Alabama, in township 4, south of range one, west of the Meridian line, bounded and described as follows, to wit: Beginning at a stake on the east side of Water street, on the north boundary of what was formerly known as the King's wharf, being fourteen feet south of the present boundary of Government street, which stake is south eleven degrees east, distant fourteen feet from the southeast angle of Government street and Water street, which is north seventy-five degrees fifteen minutes east, distant fifty feet from the northeast corner of the lot surveyed, as confirmed to the heirs of Espijo, and held under certificate number five; thence with the east boundary of Water street north eleven degrees west, one hundred and eighty-one feet to a stake on the south boundary of what was originally designated as John Forbes & Co.'s canal; thence with said *thence with said* canal north 78 degrees 45 minutes east, 400 feet to the west edge of the channel river; thence with said channel south 11 degrees east, 181 feet; thence south 78 degrees 45 minutes west, 400 feet, to the place of beginning, containing 72,400 superficial feet.

There is, therefore, granted by the United States unto William Pollard, John Pollard, Harriet Fowler, wife of John Fowler, formerly Harriet Pollard, Phebe Ensign, wife of Henry P. Ensign, formerly Phebe Pollard, Louisa Huggins, wife of George Huggins, formerly Louisa Pollard, Eliza Case, wife of Joseph Case, formerly Eliza Pollard, as being the only heirs at law of William Pollard, and their heirs, the tract of land above described: to have and to hold the said tract, with the appurtenances, unto the said William

Pollard, John Pollard, Harriet Fowler, wife of John Fowler, formerly Harriet Pollard, Phebe Ensign, wife of Henry Ensign, formerly Phebe Pollard, Louisa Huggins, wife of George Huggins, formerly Louisa Pollard, and Eliza Case, wife of Joseph Case, formerly Eliza Pollard, as being the only heirs at law of William Pollard, and to their heirs and assigns forever. Provided, nevertheless, that the said confirmation and this patent shall operate only as a relinquishment, on the part of the United States, of all their right and claim to the above described lot of ground, and shall not interfere with or affect the claim or claims of third persons.

In testimony whereof, I, Martin Van Buren, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, this fourteenth day of March, in the year of our Lord one thousand eight hundred and thirty-seven, and of the independence of the United States the sixty-first.

MARTIN VAN BUREN.

By the President: A. VAN BUREN, *Secretary.* [SEAL.]

Recorded volume C., page 91; examined.

HUDSON M. GARLAND,
*Recorder of the Gen. Land Office.*

Don Ventura Morales, principal contador of the armies, intendant pro tem. of the province of Louisiana and West Florida, superintendant, sub-delegate, judge of affairs relating to lands and the royal domains:

Whereas, Messrs. Panton, Leslie & Co., presented themselves before this tribunal by means of William Simpson, their agent and attorney in Mobile, exhibiting a grant for a lot in the said town, of eighty feet front by two hundred and eighty-eight feet deep, on condition of raising it and filling it with earth, so as to bring it on a level with the surrounding grounds, as also the road that leads to the spring, they both being muddy, sloughy, and besides, subject wherefore results injury to the public; and, taking into consideration the utility that would arise from the execution of the proffered work in the manner proposed, according to the information of Don Joachin De Orsino, commandant and sub-delegate of the royal revenues of this said place; and the petition being referred to the King's solicitor, he agreed to it on condition that the offers therein made be fulfilled; and by a decree of the first of February of the present year, I granted to the house of the said Panton, Leslie & Co., the lot which, in their name, was exhibited on the condition proposed, with directions for the said sub-delegate to inform me of the time that was sufficient for the fulfilment of the said conditions, a map of the said lot having been remitted to me in order that the titles might be made out in form, and having di-

rected to him the map containing the survey made by the surveyor, Mr. Joseph Collins, which accompanied the sub-delegate, ordered it to be attached with his information to the memorial; and, by a decree made with the advice of the assessor on the second instant, I ordered the titles to be made out with the condition hereinafter mentioned. Wherefore, exercising the powers vested in this intendancy, I do hereby, in the name of the King our lord, whom God preserve, grant to the house of Messrs. Panton, Leslie & Co., the lot which they have solicited in the town of Mobile, in the plan designated by the map that has been remitted to us under the dimensions, courses, and distances which it comprehends, containing eighty feet front on Royal street, and two hundred and eighty feet deep, as far as the river Mobile, bounded on all sides by Government street and lot belonging to the said house and company.

In virtue whereof, I declare them to possess the entire and full ownership to the said lot, in order that, as their own, they may enjoy, use, or alienate it at pleasure, hereby giving them power to take possession or to claim it, if there be any improvement in that in which I put and protect them, without prejudice to a third person who may better have a right, on condition that they raise, fill, and bring said lot to a level with the surrounding ground, and make and repair the road that leads to the spring, agreeably to the order, in order that the public be benefitted thereby, and the injuries hitherto experienced therefrom, prevented; and unless their works be completed within four months, counting from the second instant, this grant shall be void.

Whereupon, I have ordered the present to be delivered, signed with my hand, sealed with my arms, and countersigned by the below written notary of the royal revenues, by whom, as well as the principal officer of the chamber of accounts, this title will be recorded, as by instructions he is required.

Given in the city of New Orleans, this ninth day of June, one thousand eight hundred and two.

JOHN VENTURA MORALES.

By command of the Intendant.

CHARLES TENIERS, *Not'y.*

The preceding title is recorded in the book of titles, from page 44 to 46. New Orleans—dated as above.

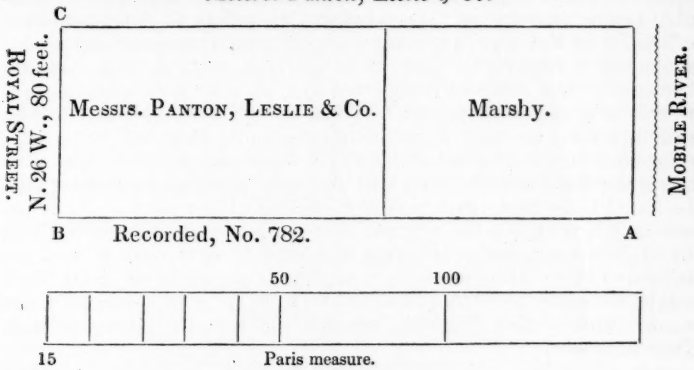
TENIERS.

NEW ORLEANS, *the 12th June*, 1802.

In the principal office of accounts of the army and of the royal revenues, the preceding title is recorded in the book destined for that purpose, on pages 10 and 11, as is provided.

GILBERT LEONARD,
MANUEL ARMURE.

*Messrs. Panton, Leslie & Co.*




Don Vincent Sebastian Ventado,
*Surveyor General of West Florida.*

The Intendant General of this province having granted to Messrs. Panton, Leslie & Co. a lot of 80 feet front by 288 feet deep, in the township of Mobile, according to the title of concession in form despatched in New Orleans, capital of Louisiana, on the 9th day of June, 1802, to which my predecessor omitted to add the duplicate of the survey; and neither does it appear to be recorded in the surveyor general's office at the time kept by me. And it appearing, from the said title of concession, that the lot *that the lot* was surveyed, and the limits thereof marked out by the surveyor who was deputed for that post, Mr. Joseph Collins, the map and original survey was attached to the memorial preferred by Mr. William Simpson, agent for said house; Mr. John Forbes, by direction of said house, presented himself with the duplicate map and certificate of survey given by the said Collins, in order that it might be recorded *and* authentic and confirmatory, and documents thereof be despatched and given, to be united to the title of concession for the said lot, which is situated in the said town of Mobile, and on the eastern side of Royal street: bounded on the north by another lot belonging to said house; on the south by Government street, upon which it measures 288 feet in lengh; on the east by Mobile river, and on the west by said Royal street, whereon it measures 80 feet in front, as is now clearly manifested by the preceding map, copied from the one formed by the said surveyor. Whereupon I give the present in the town of Pensacola, the 26th day of September, 1806.

*Advertisement.*

Although the original does not mention the feet, by which the sides of the lot are measured, are Burgos, London, or Paris mea-

sure, the latter ought to be understood as meant, as being conformable to the measure of this province, according to the delineation of the lot by the map, a rectangular parallelogram, containing consequently a superficial area of 71 perches and 31 feet; but the bearings of the compass designated in it do not agree with the said figure, or with the right line A B *bear* S. 62° west; wherefore B C, raised in the extremity B, perpendicular to A, must tell N. 28 W.; therefore, on every point of view, the figure must be considered as a rectangular parallelogram, and the two bearings mentioned will be found to be best adapted to the locality of the place. Notwithstanding it is said in the original that the lot is bounded on the east by Mobile river, and in the map the eastern extremity of said lot is figured at a certain distance from the western part of the river, it might be understood that the 288 feet are to be counted from the eastern side of Royal street, towards the river, till they meet it. Date as above.

VINCENT SEBASTIAN PINTADO.

Recorded in survey book 7, page 7, No. 1,782. Pensacola—date as above.

VINCENT SEBASTIAN PINTADO.

THE STATE OF ALABAMA, *Mobile county:*

I, Augustus Brooks, clerk [of] the circuit court of Mobile county and State of Alabama, do hereby certify that the foregoing sixteen pages and ten lines contain a true and correct transcript of the proceedings had in the case therein mentioned, as full and complete as the same remains of record and on file now in my office.

In testimony of which, I have hereunto set my hand and affixed the seal of the office of said court, at my office in the city of Mobile, this 31st day of December, A. D. 1841.

Attest: A. BROOKS, *Clerk.* [SEAL.]

And at the January term, 1842, of the Supreme Court—present the honorable Henry W. Collier, chief justice; Henry Goldthwaite and John I. Ormond, associate judges—came the plaintiffs by their attorney, and say that, in the record and proceedings, and giving judgment in the circuit court, in the suit aforesaid, there is manifest error in this, for which said plaintiffs pray it may be reversed, annulled, and for nothing held; and for causes of error the plaintiffs assign: 1st, All the matters contained in the bill of exception. 2d, The charge of the court relating to lands overflowed by high tides at the time of the admission of the State of Alabama into the Union. 3d, On the whole record and evidence, judgment should have been for the plaintiffs, &c.

JAMES Y. BLOCKER,
*for Plaintiffs in error.*

And on the 11th day of April, 1842, the court *having* met pursuant to adjournment—present all the judges.

This day came the parties by their attorneys; and thereupon the record and proceedings in said cause, and the matters assigned for

error therein, being argued and examined, it seems to the court that, in the record and proceedings of said circuit court, there is no error. It is therefore considered that the judgment of said circuit court be in all things affirmed, and that the said Philip McLoskey and John Hagan recover of the said John Pollard, William Pollard, John Fowler and wife, Henry P. Ensign and wife, George Huggins and wife, and Joseph Case and wife, the costs of this cause in this court and in said circuit court.

THE STATE OF ALABAMA,

*Office of the clerk of the Supreme Court.*

I, James B. Wallace, clerk of said court, do hereby certify that the preceding thirteen pages contain a correct transcript of the record and proceedings in the case of John Kemp, *ex dem.* the heirs of Pollard, and James Thorp, John Hagan, and Philip McLoskey, as the same are on file and remain of record in my office.

In testimony whereof, I have caused the seal of said court to be hereunto affixed, and set my hand, at office, this [SEAL.] thirtieth day of November, in the year of our Lord one thousand eight hundred and forty-two.

JAMES B. WALLACE,
*Clerk Supreme Court, State of Alabama.*

The United States of America to James Thorp, casual ejector, &c., John Hagan and Philip McCloskey, tenants in possession, holding under said James Thorp, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the first Monday of January next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Alabama, wherein John Pollard, William Pollard, John Fowler, and Harriet his wife, late Harriet Pollard, Henry P. Ensign, and Phebe his wife, late Phebe Pollard, George Huggins, and Louisa his wife, late Louisa Pollard, and Joseph Case, and Eliza his wife, late Eliza Pollard, heirs at law of William Pollard, deceased, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 30th day of November, 1842.

HENRY W. COLLIER,
*Chief Justice of the Supreme Court of Alabama.*

Service acknowledged.

J. A. CAMPBELL, *Att'y for def't.*
STEWART & EASTON,
*Att'ys for def't.*

*December* 19, 1842.

Filed 16th January, 1843.

[REC. C, J. T. 1843.]—3